

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:	:	Case No. 11-61613
	:	
Thomas M. Bolon Jr.,	:	Chapter 7
	:	
Debtor.	:	Judge John E. Hoffman Jr.

David M. Whittaker, Trustee	:	
	:	Adv Proc No.13-ap-02405
Plaintiff,	:	
	:	
vs.	:	
	:	
Groves Venture LLC, et al.,	:	
	:	
Defendants.	:	

**MOTION FOR LEAVE TO FILE AN AMENDED ANSWER
TO PLAINTIFF'S COMPLAINT AND REQUEST FOR EXTENSION OF TIME
IN WHICH TO FILE AN ANSWER OR OTHERWISE RESPOND TO
DEFENDANTS' MOTION TO DISMISS**

Now comes Christal L. Caudill, the Chapter 7 Trustee for the Bankruptcy Estate of Groves Venture LLC ("Groves Venture") (Bk. Case #14-52677, S.D. of Ohio, Eastern Division) and hereby moves this Court pursuant to Fed. R. Civ. P. 15 and 6 (b) for Leave to file an Amended Answer to David M. Whittaker, Trustee's ("Plaintiff") Complaint and an Answer to Defendants', Onsri Enterprises, LLC, Novotec Recycling, LLC, Preecha Inthisarn, Mayling Inthisarn, L. Roland Inthisarn and Groves Warehouse LLC ("Defendants"), Motion to Dismiss filed on January 22, 2014. Support of the Motion is set forth in the attached Memorandum.

Respectfully submitted,

/s/ Christal L. Caudill
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MEMORANDUM IN SUPPORT

I. Background.

On November 15, 2013, Plaintiff filed a Complaint against Defendants seeking to avoid and recover a fraudulent transfer, to preserve the avoided fraudulent transfer for the benefit of the bankruptcy estate, to grant money judgment, and to determine that the Debtor, Thomas Bolon's ("Bolon") interest in Groves Warehouse LLC is property of the bankruptcy estate. The named Defendants to the Complaint were Onsri Enterprises, LLC, Novotec Recycling, LLC, Preecha Inthisarn, Mayling Inthisarn, L. Roland Inthisarn, Groves Warehouse, LLC and Groves Venture, LLC.

Among other things, Plaintiff alleges that Bolon as the sole member of Groves Venture transferred an interest in Novotec Recycling, LLC ("Novotec") to the Defendants for less than fair market value. Plaintiff alleges the transfer was fraudulent pursuant to 11 U.S.C. §548 and O.R.C. §1336.01. On January 22, 2014, Defendants filed a Motion to Dismiss the Complaint alleging that Plaintiff did not have standing to bring

the claim. Plaintiff filed an Objection to the Motion to Dismiss on April 7, 2014. The matter is still pending before this Court.

On April 17, 2014, Plaintiff filed a Chapter 7 bankruptcy petition on behalf of Groves Venture. Christal L. Caudill (“Trustee”) was appointed as the Trustee on April 25, 2014. The “341” Meeting of Creditors was held on May 22, 2014. Upon information obtained from Plaintiff and at the “341” Meeting of Creditors, the Trustee believes an amended Answer is necessary to assert certain Cross-Claims against one or more of the Defendants. Trustee believes sufficient evidence exists that Groves Venture, LLC transferred its ownership interest in Novotec for less than fair market value and that the transfer is fraudulent under 11 U.S.C. §548 and O.R.C. §1336.01.

Prior to the commencement of the Groves Venture bankruptcy, attorney Jim Coutinho entered an appearance and filed an Answer to Plaintiff’s Complaint on behalf of Groves Venture, LLC. There were no Cross-Claims asserted in the Groves Venture’s Answer.

II. Legal Standard.

Pursuant to Fed. R. Civ. P. 15(a), a party may request leave to file an amended or supplemental pleading and “leave shall be freely given when justice so requires”.

Fed. R. Civ. P. 13(g) provides that:

A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counter-claim or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

Furthermore, L.B.R. 9013-1 provides a twenty-one (21) day deadline to respond to motions to dismiss filed by a Defendant in an adversary case. However, Fed. R. Civ. P. 6(b) provides that the Court may extend the time to respond to a Complaint or Motion "...on motion made after the time has expired if the party failed to act because of excusable neglect."

III. Argument.

The Trustee became an interested party upon the filing of the Groves Venture, LLC bankruptcy petition. The filing occurred well beyond the time permitted to file her own Answer and Cross-Claim and otherwise respond to the Defendants' motion to dismiss. As stated above, the Trustee believes she has a fraudulent transfer claim against the Defendants. This claim is identical to the fraudulent transfer claim asserted in Plaintiff's complaint. The Trustee can assert this claim by initiating a separate Adversary Proceeding in the Groves Venture, LLC bankruptcy case; however, it will not be efficient for the parties to litigate the same facts and legal claims in separate cases. Allowing the Trustee to participate in the instant case will avoid multiple suits and provide judicial efficiency for all parties involved.

IV. Conclusion.

Wherefore, Christal L. Caudill, Trustee for the Bankruptcy Estate of Groves Venture LLC, hereby requests that she be given leave to file an Amended Answer

asserting Cross-Claims and respond to Defendants' Motion to Dismiss, and for an extension of time, up to and including June 30, 2014.

Respectfully submitted,

/s/ Christal L. Caudill
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the attached Motion for Leave to file an Amended Answer to Plaintiff's Complaint and for an Extension of Time to Respond to Defendants' Motion to Dismiss was served by ordinary US mail upon the following parties on this 27th day of May, 2014.

/s/ Christal L. Caudill
Christal L. Caudill, Trustee

SERVED ELECTRONICALLY:

US Trustee

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